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OFFICE OF PETITIONS

ON PETITION

In re Application of
Darren Rogers et al.
Application No. 09/733,602
Filed: December 8, 2000
Attorney Docket No. 1391 (TOUCHSTONE)

This is a decision on the petition filed December 27, 2004, under 37 CFR 1.137(a)¹, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned for failure to timely respond to the Notice of Informal Application, purportedly mailed May 16, 2001. A Notice of Abandonment was mailed November 17, 2004.

Petitioner argues that the Notice dated May 16, 2001 was never received and submits a declaration from the Attorney of record at the time the Notice was purportedly mailed, to substantiate the claim of non-receipt and thus that the failure to respond was unavoidable. An oath or declaration in compliance with 37 CFR 1.63 including the residence of each inventor is provided with the petition.

A review of the file reveals a few irregularities with the claim that a Notice of Informal Application was mailed. First, the Notice dated May 16, 2001 notes that the time period for reply was to be indicated in an accompanying Office Action and secondly, the USPTO PALM records fail to indicate a mail date for the Notice or any Office Action in 2001.

¹ A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(l);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

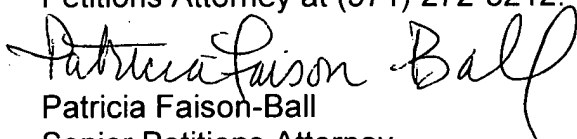
In view thereof, it doesn't appear that notification of the defective declaration and the requirement to correct the file was ever given.

Additionally, petitioner's argument that the file was correct upon filing has not been substantiated because, while a copy of the oath or declaration with the signature page from the assignment is on file with a filing date of December 8, 2000, there does not appear to be a copy of the assignment with the incorrect signature page on file with a receipt date of December 8, 2000 as claimed. The explanation given for the defective oath is that the signature pages for the assignment and that for the oath or declaration somehow were switched but the only evidence presented to support the claim is the application transmittal which is not proof of what was filed only what was intended to be filed.

However, in view of the lack of notification that the oath or declaration was defective and that a required reply was due within a specific period of time to avoid abandonment, failure to file a timely reply has been determined to have been unavoidable.

This application is revived and this matter thus will be referred to the Publishing Division for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in cursive script, reading "Patricia Faison-Ball". The signature is written in dark ink and is positioned above the printed name and title.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions